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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1973

No. 73-324

THE PEOPLE OF THE STATE OF CALIFORNIA, and the CLASS OF COUNTY CLERKS and REGISTRARS OF VOTERS OF CALIFORNIA,

Petitioners,

v.

ABRAN RAMIREZ, LARRY GILL and ALBERT LEE, on behalf of themselves and all others similarly situated, LOS PINTOS, 7th STEP FOUNDATION, INC., (CALIFORNIA AFFILIATES), PRISONERS' UNION, THE LEAGUE OF WOMEN VOTERS OF CALIFORNIA, and EDMUND G. BROWN JR., Secretary of State of the State of California,

Respondents.

Memorandum Opposing Certiorari

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Memorandum Opposing Certiorari

This is the second petition for certiorari seeking review of the decision of the California Supreme Court in *Ramirez* v. *Brown,* 9 C.3d 199, 507 P.2d 1345, 107 Cal.Rptr. 137. The Court has already granted the petition of Viola N. Richardson, the County Clerk and Registrar of Voters for Mendocino County in *Richardson* v. *Ramirez,* No. 72-1589. The present petition should be denied because it raises no substantive issues in addition to those presented by *Richardson* v. *Ramirez,* and because it is seriously defective procedurally.

The issue raised by this petition and by *Richardson* v. *Ramirez* is whether California may constitutionally deny the right to vote to persons who have been convicted of "infamous crimes," notwithstanding that they have completed their terms of prison and parole. In the Court below respondent Secretary of State Brown was represented by the Attorney General of California, who represents the present petitioners. Respondent Brown took the position before the California Supreme Court that its previous decision in *Otsuka* v. *Hite,* 64 C.2d 596, 414 P.2d 412, 51 Cal.Rptr. 284 (1966) had led to a lack of uniformity in the several California counties. The Secretary of State's office had conducted a survey of all fifty-eight counties, which indicated that many former felons eligible to vote in some counties would be ineligible in others. The Secretary of State, represented by the Attorney General, urged the California Supreme Court to clarify the eligibility of former felons to vote. The Secretary of State and the Attorney General did not take any position on the merits other than to urge such clarification, and never suggested that there was any state interest, compelling or otherwise, that required disenfranchisement of former felons.

When the petition for certiorari was filed in *Richardson* v. *Ramirez, supra,* respondent Secretary of State Brown requested the California Attorney General to represent him before this Court. Since the request made to the California Supreme Court by the Attorney

General in behalf of Secretary of State Brown for a clarification of the voting rights of former felons had been fully satisfied, the Secretary of State requested that the Attorney General oppose the petition for certiorari. The Attorney General refused to represent the Secretary of State, and instead filed the present petition, purportedly in behalf of "the People of the State of California, and the Class of County Clerks and Registrars of Voters of California."

Since the People of the State of California were not parties in the court below, they have no standing to seek a writ of certiorari at this time. This point has been acknowledged by the Attorney General in his letter of August 29, 1973, to the Clerk of the Court. Although the Attorney General purports to represent "the Class of County Clerks and Registrars of Voters of California," and although this class was a party in the Court below, the Attorney General has not named as a petitioner any specific representative of the class he purports to represent. Respondent Brown is unaware of any authority which authorizes the filing of a petition for writ of certiorari in behalf of a class in the absence of at least one representative of the class.

Aside from the legal question whether the class of county clerks and registrars of voters may seek a petition for writ of certiorari in the absence of a named class representative, there is a serious factual question whether the Attorney General actually represents the class in filing the present petition. A survey recently

conducted by the Secretary of State's office of all fifty-eight county clerks and registrars of voters in California suggests that the vast majority are satisfied with the decision of the California Supreme Court. Specifically, fifty-two of the fifty-eight county clerks and registrars of voters, representing counties which contain 97.39 percent of the registered voters of California, indicated such satisfaction. In addition, in a survey of election officials in nineteen California counties, including the sixteen largest counties, only two counties indicated that they had authorized the Attorney General to file the present petition in their behalf, and officials in both of these counties stated that they gave such authorization at the request of the Attorney General, not because of any dissatisfaction with the decision in *Ramirez* v. *Brown, supra.*

The substantive issue raised by the present petition is whether the State of California may deny the suffrage to an otherwise eligible voter who has in the past been convicted of an "infamous crime" and has completed his term of prison and parole. As the chief elections officer of California, respondent Secretary of State Brown represents to the Court that the "infamous crime" voting disability provides no administrative benefit to the state whatsoever. To the contrary, the ruling of the California Supreme Court in *Ramirez* v. *Brown* greatly eases the administrative burden which previously was imposed on election officials. Prior to the *Ramirez* v. *Brown* decision, each county had to determine for itself which convictions would

be grounds for disenfranchisement from voting. Once such a determination was made, it had to be implemented by the county clerk's office and by thousands of deputy registrars of voters, who usually are private citizens who register voters on a part-time basis. Since deputy registrars were frequently unable to decide individual cases, questionable voters were generally referred to the county clerk's office. The "infamous crime" voting disability thus made the process of registering voters more complicated and undoubtedly discouraged some qualified electors from registering to vote. Under the decision of the California Supreme Court, these administrative burdens are either eliminated or greatly simplified. The seriousness of the administrative burden which was imposed by the "infamous crime" disqualification provision is confirmed by the aforementioned survey of county election officials which indicated widespread support for the decision of the California Supreme Court.

In light of the administrative considerations stated above, the "infamous crime" voting disqualification can only be justified, if at all, on grounds of general policy. It is doubtful, however, whether the state can demonstrate either a compelling or rational policy interest in denying former felons the right to vote. The individuals involved in the present case are persons who have fully paid their debt to society. They are as much affected by the actions of government as any other citizens, and have as much of a right to participate in governmental decision-making. Furthermore,

the denial of the right to vote to such persons is a hindrance to the efforts of society to rehabilitate former felons and convert them into law-abiding and productive citizens.

Further discussion of the substantive issues presented by the present petition would be inappropriate in light of the granting of the petition in *Richardson v. Ramirez*. All the substantive issues will be fully aired in the *Richardson* case, and Rule 42(4) of this Court provides the California Attorney General with ample opportunity to present his arguments and views in that case. Since the present petition is duplicative and procedurally defective, this Court should avoid complex procedural questions by exercising its discretion to deny the petition for a writ of certiorari.

Dated: October 19, 1973

Respectfully submitted,

Edmund G. Brown Jr.
Daniel Hays Lowenstein

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Secretary of State of the
State of California